2001

Contracts Funding and Mortgage Exchange v. Darrel D. Maynes : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CONTRACTS FUNDING AND MORTGAGE EXCHANGE,
a Utah Corporation,
Plaintiff and Respondent,
vs.
DARREL D. MAYNES, DIRECTOR SALT LAKE COUNTY BUILDING AND ZONING ENFORCEMENT DEPARTMENT,
Defendants and Appellants.
CONTRACTS FUNDING AND MORTGAGE EXCHANGE,
a Utah Corporation,
Plaintiff and Respondent,
vs.
BOARD OF SALT LAKE COUNTY COMMISSIONERS,
Defendant and Appellant.

Case No.
13608

PLAINTIFF'S - RESPONDENT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF SALT LAKE COUNTY
HONORABLE STEWART M. HANSON, JUDGE

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STATEMENT OF THE NATURE OF THE CASE

The Third District Court of Salt Lake County ruled that the Salt Lake Planning Commission was estopped to deny the right of respondent to construct a mobile home park on respondent's property located within Salt Lake County. Said Court decreed that the respondent had the right to construct said mobile home park and the Court directed Darrel D. Maynes, Director, Salt Lake County Building and Zoning Enforcement Department, to issue a building permit for the construction of a mobile home park on said property.

DISPOSITION IN LOWER COURT

After consolidation of two cases, receiving testimony and evidence, the Court held that a building permit should issue to the respondent since he did have the right to construct a mobile home park on his land, said land being situated in an unzoned area.

RELIEF SOUGHT ON APPEAL

The appellants seek reversal of the trial court's judgment and for an order reinstating the decisions of the Salt Lake Planning Commission and the Board of Salt Lake County Commissioners wherein they denied respondent's application for a permit to construct the said mobile home park. The appellant is not entitled to relief.

STATEMENT OF FACTS

On or about October 17, 1972 the Plaintiff, Contracts Funding and Mortgage Exchange, a Utah Corporation, the respondent herein, contracted to purchase 45 acres of unzoned land located within the County of Salt Lake, State of Utah. The unzoned land was purchased through a Court supervised estate sale for the sum of $168,150.00 with $16,815.00 down and the balance of $151,335.00 being paid within six months as required by the contract (Exhibit 5-P and 6-P).

The land remained unzoned until the 24th day of August, 1973, at which time it was zoned A-5 by the County.

This case is a consolidation of two cases. The first, District Court No. 213811, was an action by the Plain-

tiff against Darrell D. Maynes, Director, Salt Lake County Building and Zoning Enforcement Department, for the issuance of a Writ of Mandamus for his failure to issue a building permit on the unzoned land. The second, District Court No. 214279, is against the Board of Salt Lake County Commissioners and represents the administrative proceeding of this case. All actions by the Plaintiff were taken while the land was unzoned with the exception of the second suit, which was filed on September 5, 1973. The facts in the second case as set forth in the Complaint, and Amended Complaint, and referred to hereafter as appropriate, are admitted by the appellant. (R-40 and R-43).

This case requires the construction of three basic areas of law; the first, Chapter 27 of Title 17, Utah Code Annotated, 1953, as Amended, which will be hereinafter referred to as the "Utah Code"; and, two portions of the Revised Ordinances of Salt Lake County, and they are: Mobile Home Park Ordinance consisting of Chapter 3 of Title 2; and the Uniform Zoning Ordinance of Salt Lake County made up of all of Title 22, and will be referred to as the "County Zoning Ordinance."

The Plaintiff had built other mobile home parks prior to the one in question. Shortly after the purchase of the 45 acres, and before any talk or action in regard to rezoning the acreage or any portion thereof, Plaintiff went to Director Maynes of the Salt Lake County Building and Zoning Enforcement Department to obtain a building permit. Plaintiff was instructed that a permit would not issue until a Conditional Use Permit was granted and referred Plaintiff to the Salt Lake Planning Commission. In the latter part of December, 1972, or around the first part of January of 1973, the

Plaintiff did file an application with that Commission for a Conditional Use Permit together with the necessary plans and specifications and other documents required by Section 4 of the Mobile Home Park Ordinance, said Section setting forth some 50 items to be complied with. The application was approved on March 13, 1973, following a hearing before the Salt Lake Planning Commission, and the Conditional Use Permit granted. The Plaintiff then acquired 17 additional acres of property located in the City of West Jordan. (R-5) Said acreage being already zoned for a mobile home park. (R-5) The Commission's planning staff set the matter for a new hearing on March 27, without the Planning Commissoin withdrawing, cancelling or otherwise modifying its decision granting a Conditional Use Permit two weeks prior thereto on March 13th. Following the hearing on March 27, the Commission denied the Conditional Use Permit. No written reasons were set forth although Section 7 of the Mobile Home Ordinance requres that in the event of disapproval the Commission shall set forth the reason therefore.

An Appeal was taken from the action of the Planning Commission to the Board of Salt Lake County Commissioners, and a hearing was held on the Appeal on April 12, 1973. The Board of County Commissioners did not act thereon until August 8, 1973, at which time the Appeal was denied. A period of almost 4 months had expired between the hearing and the denial notwithstanding that the County Zoning Ordinance in Section 2 (6) (b) specifically requires the Board of Commissioners to act within 7 days after the hearing date of such an Appeal by affirming, reversing, altering or recommending further review of the decision by the Planning Commission.

Again, on August 7, 1973, the Plaintiff demanded of Director Maynes that a Building Permit be issued on the unzoned land, but the Director again refused. (Exhibit 3-P) The suit against Director Maynes praying for a Writ of Mandamus was then filed on August 10, 1973.

Plaintiff purchased the land intending to use the same for a mobile park, and even prior to the purchase had made inquiries about the use of unzoned land for purpose of a mobile home park. He had talked with one of the Salt Lake County Commissioners and was informed that a mobile home park could be put upon unzoned land. (R-6)

ARGUMENT

POINT 1

LOWER COURT DID NOT ERR IN FINDING THAT THE PLANNING COMMISSION AND THE PLANNING STAFF ACTED IMPROPERLY AND UNLAWFULLY IN GIVING NOTICE OF A RE-HEARING ON PLAINTIFF'S APPLICATION AND IN HOLDING THE RE-HEARING ON MARCH 27, 1973, AND DENYING THE CONDITIONAL USE PERMIT ON APRIL 6, 1973

As noted, the appellant admits the allegations of the Complaint in the second suit against the Board of Salt Lake County Commissioners. A public hearing was held on March 13, 1973. The staff on its own initiative, without any official or proper action to withdraw, cancel or otherwise modify the approval granted

on March 13, and without official or proper order directing a new hearing, did set the matter down for hearing again on March 27, 1973. Further, following the second hearing, the Commission did not comply with Section 7 of the Mobile Home Park Ordinance which requires in the event of a disapproval the reasons therefore shall be set forth and reads as follows:

> After the consideration and action of the Planning Commission, the Zoning Administrator shall give the applicant written notification of the decision. Copies of such notification shall be forwarded to the Board of Health and the Building Inspection Department and in the event of disapproval shall set forth the reasons therefore. (Underscoring added)

The County Commission, like any administrative agency, is subject to the requirements of administrative procedural due process, the elements of which are lacking in the proceedings of this case. 2 Am. Jur. 2d, Administrative Law Section 353, Page 166.

The County's position on this point assumes the validity of its argument in Point III, that is, that the land was subject to the Plaintiff obtaining a conditional use permit. In the absence of that requirement, there would not be a case before the court. However, the County's insistence that the requirement be met has prohibited the Plaintiff, as well as the Planning Commission, from going ahead with reports from other departments and agencies as provided in the Mobile Home Park Ordinance. Further, in the absence of such a requirement, there would be no duty upon the Planning Commission to give residents located within 300 feet of the applicant's property a notice of hearing.

As set forth in the Plaintiff's Point III, there was no requirement for the Plaintiff to obtain a conditional use permit on the unzoned land of the Plaintiff.

POINT II

THE LOWER COURT DID NOT ERR IN FINDING AND CONCLUDING THAT RESPONDENT RELIED TO ITS DETRIMENT ON THE PLANNING COMMISSION'S ACT OF MARCH 13, 1973.

The Lower Court's Finding of Fact No. 6 is supported. Paragraph 20 of Plaintiff's Complaint is admitted and reads as follows:

> That the Plaintiff relying on the approval of the Planning Commission expended large sums of money and further obligated itself to purchase 17 additional acres of land which adjoined the said 45 acres of land but which 17 acres of land are situate in the city of West Jordan and are zoned for mobile home use. That the plans of the Plaintiff were and are for development of the entire tract, consisting of the 17 acres in West Jordan and the 45 acres in Salt Lake County, of 62 acres to be developed as one unit.

There is no allegation that a Uniform Real Estate Contract was entered into on that date, but only that the Plaintiff obligated itself to purchase the 17 acres, and it did so in reliance on the approval of the Planning Commission in granting a conditional use. While the Uniform Real Estate Contract is dated the .... day of June, 1973, this does not mean, in contravention to the admitted facts set forth in Paragraph 20 of the Complaint, that there was no other contract or preliminary

contract between the parteis existing during the period of time when the Plaintiff, as alleged, acted in reliance on the action of the Planning Commission. Preliminary contracts between parties such as Earnest Money Receipt And Offer To Purchase is uncommon in Utah particularly where a Uniform Real Estate Contract is involved, the latter document merging prior agreements.

Also, the plans for the development of a mobile home park included the 17 acres, and the development was based on the total acreage. These plans were filed with the County prior to the hearing before the Planning Commission. It would not therefore be unusual for the Plaintiff to consummate its proposed and intended purchase when the County Planning Commission gave approval for a conditional use permit.

The case of *Gibbons and Reed v. North Salt Lake,* 19 U. 2d, 329, 431 P. 2d 559 (1967) is not of the same factual situation as the present case, and this Court made it clear in its decision that each case must be examined on its own peculiar facts and circumstances. However, the rational of the Gibbons and Reed case influenced the Lower Court in the present case, and correctly so. In the Gibbons and Reed case there was a prior non-conforming use, and in the present case there was no restriction of use whatsoever. In that regard the present case is stronger since, as stated by the Court, there is a tendency to phase out nonconforming uses. In both cases there is a reliance. In the Gibbons and Reed case the Court did state:

> ". . . We hesitate to hold the provisions of the ordinance completely invalid as they might apply to other fact situations since this excava-

> tion ordinance illustrates an example where it is impossible or impractical to lay down the standards without destroying flexibility necessary to enable the town to carry out the legislative intent."

In the present case we have a building and licensing statute involved with the County Zoning Ordinance. The Lower Court in the present case determined it was not necessary to hold the provisions of either ordinance unconstitutional as was done by the Lower Court in the Gibbons and Reed case. The Lower Court in the present case adopting the procedure which in effect makes the conditional use requirements of the Mobile Home Ordinance as well as the County Zoning Ordinance unenforceable as against the Plaintiff. In view of the fact that the land involved is or was one of the last few portions of Salt Lake County to be zoned into districts, the decision of the Lower Court falls well within the rational of the Gibbons and Reed case.

The case of *Price v. Schwafel,* 92 Ca. App. 2d 77, 206 P. 2d 683, (1949), cited by the appellant, acknowledges the right of the appellant to a building permit during the interim zoning period at page 688:

> ". . . if an application for a building permit accompanied by the proper plans and other data had been made during that interim there is no question but that appellants would have been entitled to the permit under the existing 'interim' ordinance. But appellants waited until the ordinance was in process of repeal and filed their application too late to permit respondent to make necessary investigation regarding the plans of the building proposed to be erected.

The reverse is true in the case before the Court. When

the Plaintiff first asked for a building permit, the County refused. Instead, the County gave out erroneous information as to the law and required a conditional use permit. This sent the Plaintiff to the Planning Commission with the eventual zoning of the land in question approximately three quarters of a year after the first application for a building permit was made.

POINT III

THE LOWER COURT DID NOT ERR IN FINDING THAT PLAINTIFF WOULD NOT HAVE BEEN REQUIRED TO OBTAIN A CONDITIONAL USE PERMIT

It is admitted by the Appellant in its brief on page 15 that the Mobile Home Park Ordinance is not a part of the zoning ordinance. It is a building and licensing ordinance. The county has the power to make zoning county-wide, but in the absence thereof, it is limited to district zoning. This limitation is clearly spelled out in the last sentence of Section 17-27-11, Utah Code:

> ". . . . Zoning, unless county-wide, shall be limited to districts established by the Board of County Commissioners, either on petition as herein before (hereinafter) provided or by direct action as hereinbefore provided." (Emphasis added)

This same section authorizes the Board of County Commissioners, after the County Planning Commission has certified a plan or plans for zoning unincorporated territory in the county and prepared plans together with zoning resolution and maps, and after a public hearing thereon, to:

> ". . . divide the territory of the county which lies outside the cities and towns into districts and zones of such number, shape or area as it may determine, and within such districts may regulate the erection, construction, alteration and uses of buildings and structures and uses of land. . . ." (Emphasis added)

The land in this case was unzoned. The County Commission never created a district or zone which covered the land, and therefore the land was not subject to any use restriction as is land located in a district or zone created by the Board of County Commissioners, until August 24, 1974.

The county claims that the County Zoning Ordinance comes into play by virtue of Mobile Home Park Ordinance and particularly Sub-section (2) of Section 1 which states:

> "Conditional Use. A use of land for which a conditional use permit is required pursuant to Title 22, Chapter 31. . . ."

However, this Sub-section, or ordinance for that matter, did not confer any additional power upon the Planning Commission nor did it bring unzoned land under the jurisdiction of the Planning Commission. It only affected the land situate in districts created by the County Commission. This construction is borne out by examining the County Zone Ordinance. When we examine Chapter 31 referred to, we read:

> "A conditional use permit shall be required by all uses listed as conditional uses in the district regulations or elsewhere in this title. . . ." (Emphasis added)

And again, in Sub-section (5) of the same Section 2:

> (5) "Determination. The Planning Commission may permit a conditional use to be located within any district in which the particular conditional use is permitted by the use regulations of this title." (Emphasis added)

An examination of Title 22, which is the County Zoning Ordinance, shows that there are 24 different zones set up, a chapter being devoted to each zone. The first three sections of each chapter designate purpose, "Permitted Uses," and "Conditional Uses." For instance Chapter 30 thereof is entitled Manufacturing Zone, M-2, and it has as its purpose to provide for heavy industrial uses. There are 56 permitted uses and 25 conditional uses, including the use for gravel pits, quarries and rock crushing. Mobile home parks are found in Chapters 21 and 22 only as "Conditional Uses." The County Zoning Ordinance also establishes 22 districts all located within one or more of the 24 zones. The power of the Planning Commission and the right to regulate the uses of land is limited to districts and zones, and the intention of the legislature to so limit the power of the Planning Commission is clearly set forth in Section 17-27-9 of the Utah Code where the Planning Commission is authorized to make certain recommendations to regulate districts or zones including the uses of land and submit the same to the Board of County Commissioners for approval.

Thus, the Planning Commission had no authority over this land as it was unzoned land. The County Commission was not powerless for under Section 17-27-19 of the Utah Code, the Commission could without hearing prohibit construction on unzoned land for a

period of not to exceed more than 6 months, but never did use the power granted to it by the legislature. The Plaintiff acknowledges that it is subject to the balance of the Mobile Home Ordinance. It is not, however, subject to the conditional use provision of that ordinance or of the County Zoning Ordinance.

The trial court did not err, but correctly found that this land was not subject to a conditoinal use permit. To hold otherwise would be in controvention of Section 7 of the Constitution of the State of Utah and the Fifth and Fourteenth Amendments of the Constitution of the United States as was urged by the Plaintiff in both actions in its pleadings. The county cannot indirectly avoid the legislative mandate as to how the uses of land might be regulated. It must create zones and districts and comply with that legislative mandate as required by Section 17-27-11. It never did so until August 24, 1973, and only at that date did the land in question come under the jurisdiction of the Planning Commission. The decision of the trial court should stand.

POINT IV

THE ACTION TAKEN BY THE BOARD OF COUNTY COMMISSIONERS ON AUGUST 9, 1973, ZONING RESPONDENT'S PROPERTY A-5 WAS A PROPER EXERCISE OF THE STATE'S POLICE POWER AND NOT SHOWN TO HAVE BEEN ARBITRARY OR UNREASONABLE.

The County's contention that passing of the ordinance invalidates the Plaintiff's argument that a conditional use permit is not required is unacceptable. It is

an attempt by the County to gloss over the failure of administrative bodies to comply with the ordinances under which such administrative body claims to act. The Planning Commission did not act properly in setting a re-hearing; it did not set forth reasons for rejection of Plaintiff's application although required to do so by the ordinance under which it acted; the Board of County Commissioners failed to act within 7 days after hearing of the appeal as required by Section 2 (6) of the County Zoning Ordinance which uses the mandatory term that the Commissioners "shall make such decision within seven (7) days of the hearing of the appeal." *Deseret Savings Bank v. Francis et al*, 62 Utah 85, 217 Pac. 1114, (1923). Time limitations in zoning matters are generally held to be jurisdictional in the State of Utah. *Lund v. Cottonwood Meadows Co.*, 15 U. 2d 305, 392 P. 2d 40, 1964. Unlike the Price v. Schwafel case, supra, the County denied the appeal on August 8, 1973, and the next day, August 9, zoned the land in question. The prior activities and efforts by the Plaintiff were not washed out by this unusual action by the County.

POINT V

THE LOWER COURT DID NOT ERR IN ORDERING THE DIRECTOR OF THE SALT LAKE COUNTY BUILDING AND ZONING ENFORCEMENT DEPARTMENT TO ISSUE A BUILDING PERMIT TO RESPONDENT

The issuing of a building permit as required by the Lower Court would not do away with the necessity of the Plaintiff complying with the building and licensing aspects of the Mobile Home Park Ordinance. How-

ever, the issuance of such a permit would allow the Plaintiff to commence its project and take the land out of limbo where it has been for a number of months at great expense to the Plaintiff with all the attendant rising prices, rising interest rates, and all the problems associated with our modern-day society and particularly the inflationary pressures now present.

CONCLUSION

It is respectfully submitted that the judgment of the Lower Court be upheld.

Respectfully submitted,
BELL & BELL, by
J. Richard Bell